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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. [redacted]

LOUIS SHOMBERG, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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No. 717

LOUIS SHOMBERG, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, Louis Shomberg, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above-entitled case on January 25, 1954.

OPINIONS BELOW

The opinion of the District Court (R. 14-21) is reported in 115 F. Supp. 336.

The opinions of the Court of Appeals for the Second Circuit (R. 25-32) is reported in 210 F. 2d 82.

JURISDICTION

The judgment of the Court of Appeals was entered on January 25, 1954 (R. 32-33). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. Does the savings clause in Section 405(a) or the savings clause in Section 405(b) of the Immigration and Nationality Act of 1952 govern naturalization proceedings instituted prior to the effective date of that Act and pending at the time the Act took effect?

2. If there is a conflict in the application of Sections 405(a) and 405(b) to a naturalization proceeding pending at the time the Act took effect, does the savings clause in Section 405(a) prevail or does the savings clause in Section 405(b) control?

3. Does Section 405(b) of the Immigration and Nationality Act of 1952 authorize the application of Section 318 of that Act to affect naturalization proceedings pending at the time the Act became effective despite the clear prohibition in Section 405(a) that nothing contained in the 1952 Act "unless otherwise specifically provided therein" shall be construed to affect such proceedings?

The answers to questions 1-3, supra, will provide the answer to the ultimate question in this case, which is:

4. May an alien who filed a petition for naturalization prior to the effective date of the Immigration and Nationality Act of 1952, and who was at that time and is now eligible for citizenship, be deprived of a final hearing on his naturalization petition, solely because a deportation proceeding was instituted against him based upon grounds in the 1952 Act which were not a basis for deportation prior to the effective date of that Act and were therefore not in effect at the time his petition for naturalization was filed?

STATUTES INVOLVED

Section 405 of the Immigration and Nationality Act of 1952, 8 U.S.C.A. § 1101, footnote, provides in relevant part as follows:

> (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * * An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended, * * * shall be regarded as a proceeding within the meaning of this subsection.
>
> (b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

Section 318 of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1429, provides in relevant part as follows:

> * * * Notwithstanding the provisions of section 405(b) * * * no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued pursuant to this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pend

> ing against petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act; * * *

Section 329 of the Nationality Act of 1940, as amended by Section 27 of the Internal Security Act of 1950, 8 U.S.C. § 729(c), provides in relevant part as follows:

> (c) * * * No person shall be naturalized against whom there is outstanding a final finding of deportability, and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other act. * * *

Section 241(a)(4) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1251(a)(4), provides in relevant part as follows:

> Any alien in the United States (including an alien crewman) shall, upon order of the Attorney General, be deported who * * * at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefore and regardless of whether the convictions were in a single trial.

Section 19(a) of the Immigration Act of 1917, 8 U.S.C. § 155(a), provides in relevant part as follows:

> Any alien * * * who is hereafter sentenced more than once to such a term of imprisonment [of one year or more] because of conviction in this country of any crime involving moral turpitude, committed at any time after entry * * * shall, upon the warrant of the Attorney General, be taken into custody and deported. * * *

STATEMENT

Petitioner submitted a preliminary application to file a petition for naturalization, Form N-400, to the New York Office of the Immigration and Naturalization Service on or

about October 1, 1952. He was thereafter notified to appear with his witnesses for preliminary examination and, following the completion of this examination, he filed his petition for naturalization on December 22, 1952 in the United States District Court for the Southern District of New York under the provisions of Section 310(a) of the Nationality Act of 1940, as amended, 8 U.S.C. § 710(a). An examiner was designated in accordance with applicable regulations and outside investigations of Petitioner's character and qualifications were made and completed (R. 5-6). At that time, as at present, he was eligible for citizenship (R. 25).

The Immigration and Naturalization Service took none of the usual further steps to bring the petition on for final hearing. Instead, on June 22, 1953—six months and one day after the petition had been filed—the Service instituted deportation proceedings against Petitioner (R. 6). Thereafter, it refused to go forward with the final naturalization hearing but pursued the deportation proceedings with extreme and unseemly haste.

On July 28, 1953 Petitioner moved in the naturalization court by an order to show cause for an order directing that his petition for naturalization be brought on for final hearing. That order to show cause also stayed the deportation proceedings pending against him (R. 3-4). On August 21, 1953 Petitioner's motion was denied and the stay vacated (R. 14-21).

Petitioner promptly appealed to the United States Court of Appeals for the Second Circuit. On September 8, 1953 the district judge who had decided the motion in the naturalization court granted an order staying the deportation proceedings until determination and disposition of the appeal by the Second Circuit. On January 25, 1954, the Court of Appeals for the Second Circuit issued its opinions and judgment affirming the decision of the District Court (R. 25-33). Thereafter it stayed the issuance of its mandate pending disposition of the case by this Court.

The deportation proceedings instituted against Petitioner

are grounded upon Section 241(a)(4) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1251(a)(4), which did not become effective until after his petition for naturalization was filed. The charge set out in the warrant of arrest was that Petitioner had been twice convicted of crimes involving moral turpitude. Petitioner has conceded that he has been twice convicted of such crimes but has denied his deportability.[1]

Petitioner was born in London, England, in 1895 and lawfully entered the United States for permanent residence in 1903 at New York City, New York, at the age of eight. He was twice convicted of crimes involving moral turpitude in his early youth: in 1913, when he was seventeen years of age; and in 1915 when he was nineteen. He served terms in State penal institutions for both of these convictions and was never convicted of any other crimes.

At the time Petitioner was convicted—1913 and 1915—conviction for crimes was not a ground for deportation. Criminal convictions became a basis for deportation for the first time by Section 19(a) of the Immigration Act of 1917, 8 U.S.C. § 155(a), but even this Act did not render the Petitioner subject to deportation since it was expressly limited by its terms as being applicable only to those aliens who were sentenced to imprisonment after its effective date. Because Petitioner's convictions occurred prior to 1917, that statute clearly did not apply to him.

Accordingly, if Petitioner was ever amenable to deportation, it was only by virtue of a provision of the 1952 Act—which became effective after his naturalization petition was filed—and no prior provision of law ever authorized his deportation.

In view of the broad savings clause contained in Section 405(a) of the Immigration and Nationality Act of

[1] We do not believe that Section 241(a)(4) was ever intended or expected to apply to aliens in Petitioner's circumstances and it is our firm conviction that the Section is inapplicable to him. We do not press these contentions here, however, since the issue is not directly germane to this proceeding.

1952, 8 U.S.C.A. § 1101, footnote,—which provides that nothing contained in that Act should be construed to affect the validity of a petition for naturalization which was valid at the time the Act took effect, nor to affect any right in the process of acquisition, nor any proceedings pending on the effective date of the Act—Petitioner has contended that deportation proceedings which could be instituted against him *only* under the 1952 Act could not affect his right to a naturalization hearing where his petition for naturalization was filed and pending prior to the date the 1952 Act became effective.

The Immigration Service has argued that the priority provision contained in Section 318 of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1429—which establishes a priority for deportation proceedings over naturalization proceedings and which prohibits a final hearing in naturalization if a deportation proceeding is pending—overrides Section 405(a) in this case and therefore justifies the denial of a final naturalization hearing to Petitioner.

Resolution of these conflicting claims calls for, *inter alia*, a determination of the relationship between and the meanings of subsections (a) and (b) of Section 405. Subsection (a) by its terms is all inclusive: it provides that nothing contained in the 1952 Act shall be construed to affect valid petitions for naturalization, rights in process of acquisition, or proceedings pending at the time the Act took effect "unless otherwise specifically provided therein". Section 405(b) is a limited savings clause which provides only that any petition for naturalization pending at the time the 1952 Act took effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed, "except as otherwise specifically provided in title III." Section 318—a provision of title III of the 1952 Act—which prohibits final naturalization hearings where deportation proceedings are pending, does not specifically refer to Section 405(a); it does specifically refer to Section 405(b). Thus, Section 318 could be held to

bar a final hearing if pending naturalization proceedings are governed by 405(b); but would not bar a final hearing if pending naturalization proceedings are governed by 405(a).

The District Court held that "Section 405(b) is *the only* provision of the Immigration and Nationality Act of 1952 which, in pending [naturalization] cases, makes the old Act applicable to the proceedings after the filing of the petition". (R. 20) (emphasis added). In so holding, however, the District Court was troubled by the plain language of Section 405(a) and conceded: "It is true that that part of Section 405(a) which continues the old act in force as to any 'right in process of acquisition' would, in its general terms, apply to naturalization proceedings * * *." (R. 20). But it resolved the problem by holding that "the fact that section 405(b) specifically makes exactly that provision as to naturalization proceedings indicates that the general language in section 405(a) does not apply to them." (R. 20-21). The District Court also held, without differentiating between subsection (a) and (b), that "the savings clauses in Section 405" preserve for pending proceedings only the old law as to naturalization, but that Section 318 renders the old law as to deportation inapplicable (R. 21).

The Court of Appeals affirmed the decision of the District Court but shifted the grounds of decision. By reasoning in reverse, it held that if Petitioner's naturalization petition was saved under Section 405(a), Section 405(b) would have no significance and would be "entirely redundant" (R. 28). In order to avoid this result, it concluded that Petitioner's situation fell within Section 405(b) of the Act. By so concluding, it rendered 405(a) without significance, which was the very thing it refused to do to 405(b). It gave no positive reasons to support this interpretation except that "a contrary construction would nullify other portions of the statute" (R. 30). In what appears to be justification, the Court below stated that its interpretation had "at least the virtue of promoting consistency of treatment of aliens" (R. 30).

In a concurring opinion, Judge Frank indicated that he had "strong doubts" about the construction placed upon these provisions by the Court. His doubts are succinctly stated:

> "Section 318 specifically mentions § 405(b) as the sole part of § 405 which is to be inoperative when it clashes with § 318. This reference to clause (b) discloses a selective purpose, i.e., not to refer to § 405(a). Moreover, § 405(a) by its express terms provides, 'Nothing contained in this Act, *unless otherwise specifically provided therein*, shall be construed * * * to affect any * * * right in process of acquisition * * *: but as to all such * * * rights * * * the statutes or parts of statutes repealed by this Act are, *unless otherwise specifically provided therein*, hereby continued in force and effect * * *' It would seem, then, that to apply § 318 to 'rights in process of acquisition' is exactly what both §§ 318 and 405(a) deliberately said we must not do, since such an application not only (1) disregards the explicit and selective reference in § 318 to § 405(b) but also (2), in reading § 318 into § 405(a) by mere implication, disregards the words in § 405(a) 'unless specifically provided therein.' It is noteworthy, too, that the phrase 'rights in process of acquisition' in § 405(a) is new; it was not in the savings clause of the 1949 Act; it thus appears that Congress intended to broaden this savings provision. See *Petition of Menasche*, 115 Fed. Supp. 434, 436. And § 330(b), a limited savings clause, contains striking evidence that, when Congress meant to have § 318 apply retroactively—i.e., to naturalization petitions pending at the time the 1952 Act became effective—Congress plainly said so and did not rely upon mere implication." (R. 31-32).

Despite these doubts, and "with much hesitation", Judge Frank concurred. He did so, however, only because he thought, "the well-known dominant purpose of the chief sponsors of the Act was to ensure the deportation of persons like petitioner" (R. 32).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the naturalization petition filed by Petitioner prior to the effective date of the Immigration and Nationality Act of 1952 is governed by Section 405(b) of that Act.

2. In holding that where there is a conflict in the application of Sections 405(a) and 405(b), Section 405(b) prevails over Section 405(a).

3. In holding that Section 318 of the Immigration and Nationality Act of 1952 applies to naturalization proceedings pending at the time that Act took effect, despite the prohibition contained in Section 405(a) of that Act.

4. In holding that Section 318 does not differentiate between petitioners for naturalization against whom deportation proceedings are pending and petitioners against whom there is outstanding a final finding of deportability.

5. In affirming the decision of the District Court.

REASONS FOR GRANTING WRIT

1. This case raises substantial questions regarding the meaning of the savings clauses of the Immigration and Nationality Act of 1952 and the application of these provisions to naturalization proceedings pending at the time the Act took effect. These questions can arise in almost every naturalization proceeding which was pending at the time the Act took effect where the 1952 Act wrought changes in prior law with regard to the requirements for naturalization. Since the 1952 Act made numerous changes of this nature, a definitive resolution of any ambiguities surrounding the meaning and applicability of the savings clauses is of considerable importance in the administration of the naturalization laws.

These questions arise because, when considered along with other sections of the Act, Section 405(a) can often

compel a result different from that required by Section 405(b) in the determination of naturalization proceedings which were pending at the time the 1952 Act took effect and where the applicable requisites for citizenship have been changed by that Act. Two categories of cases are directly affected: the first are those cases which involve certain provisions of the 1952 Act which made changes in the requisites for citizenship and which specifically mention Section 405(b); the second group are those cases which involve other provisions of the 1952 Act which effected changes in the requisites for citizenship, but which make no mention of Section 405.

The problem in the first group of cases arises as follows: both Section 405(a) and 405(b) appear to apply to naturalization proceedings in which petitions for naturalization had been filed prior to the effective date of the 1952 Act; both provide that the old and not the new law shall govern such proceedings unless specific provision otherwise is made in the new law; but many of the provisions in the new law expressly make reference to Section 405(b) and make no mention of Section 405(a). Using Section 318 as an example, the result is as stated in Judge Frank's concurring opinion below:

> "Section 318 specifically mentions § 405(b) as the sole part of § 405 which is to be inoperative when it clashes with § 318. This reference to clause (b) discloses a selective purpose, i.e., not to refer to § 405(a). Moreover, § 405(a) by its express terms provides, 'Nothing contained in this Act, *unless otherwise specifically provided therein*, shall be construed * * * to affect any * * * right in process of acquisition * * *'; but as to all such * * * rights * * * the statutes or parts of statutes repealed by this Act are, *unless otherwise specifically provided therein*, hereby contained in force and effect * * *." It would seem, then, that to apply § 318 to 'rights in process of acquisition' is exactly what both §§ 318 and 405(a) deliberately said we must not do, since such an application not only (1) disregards the explicit and selective reference in § 318 to

> § 405(b) but also (2), reading § 318 into § 405(a) by mere implication, disregards the words in § 405(a) 'unless specifically provided therein.' It is noteworthy, too, that the phrase 'rights in process of acquisition' in § 405 (a) is new; it was not in the savings clause of the 1949 Act; it thus appears that Congress intended to broaden this savings provision. See *Petition of Menasche*, 115 Fed. Supp. 434, 436." (R. 31).

While Section 318 is the provision involved in this case, as the District Court below noted, "Title III [of the 1952 Act] contains several specific provisions that the petition for naturalization shall in certain respects be heard and determined according to the new law 'notwithstanding the provisions of 405(b)'." (R. 20). Instances cited are: "section 311 [8 U.S.C. § 1422] making new provisions for eligibility on account of race, sex and marriage, section 313(a) [8 U. S. C. § 1424(a)] making new provisions as to subversives, section 315(a) [8 U.S.C. § 1426(a)] making new provisions with respect to aliens relieved from military service and section 331(d) [8 U.S.C. § 1442(d)] making new provisions as to alien enemies." (R. 20). And not all of these provisions impose restrictions on the right to citizenship; some have enlarged the right, e.g., § 331(d). See discussion in opinion below (R. 29).

The consequence is that with regard to any naturalization petition filed prior to the effective date of the 1952 Act in which any of the above-cited provisions have applicability the questions involved in this case arise. The specific mention of 405(b) in Section 318 and each of the above-cited provisions, and their lack of any reference to 405(a) requires a determination of which provision, 405(a) or 405(b), applies to pending naturalization proceedings; and if both are applicable—since one requires a result contrary to the other—the further determination of which in a given situation prevails.

A definitive construction of Sections 405(a) and 405(b) is also necessary to settle the problems which arise in the second category of cases where none of the above-cited

provisions are involved. These are the situations where naturalization proceedings were instituted prior to the effective date of the 1952 Act, but where a petition for naturalization had not been filed by that date,[2] and the applicable requisites for citizenship contained in the old law were changed by the new law.

A graphic example is *Petition of Menasche*, 115 F. Supp. 434, (D. Puerto Rico, 1953), affirmed 210 F. 2d 899, (C.A. 1st, March 3, 1954). That case involved an applicant for naturalization who had filed a declaration of intention under the Nationality Act of 1940, which declaration was pending at the time the Immigration and Nationality Act of 1952 took effect. He did not file his petition for naturalization until after the 1952 Act had gone into effect. Menasche's naturalization was opposed by the Government on the ground that he did not meet the physical presence requirements of the 1952 Act; but the Government conceded that Menasche did meet the physical presence requirements of the prior law and was eligible for naturalization if that law controlled. The Government contended that the new law and not the prior law applied because Section 405(b)—by referring only to instances where petitions for naturalization were filed—did not save prior law in Menasche's case since he had filed only a declaration of intention and not a petition for naturalization prior to the effective date of the 1952 Act. Menasche argued that the requirements of the old law applied to him in view of Section 405(a), which saved the old law of naturalization for proceedings instituted prior to the effective date of the 1952 Act and rights in the process of acquisition at the time that Act became effective. Resolution of these opposing contentions requires a determination as to whether Section 405(a) or Section 405(b) applies to such naturali-

[2] A naturalization proceeding could be instituted, for example, by the filing of a declaration of intention or a Form N 400, Preliminary Application to File a Petition for Naturalization. See discussion of *Petition of Menasche* and *In re Jaeson*, *infra* pages 13-14.

zation proceedings and, if they conflict in their application, which prevails.

In re Jocson, 117 F. Supp. 528 (D. Haw. 1954)[3] is another illustration. Jocson filed a Form N-400, Preliminary Application to File a Petition for Naturalization, prior to the effective date of the 1952 Act, but did not file his petition for naturalization until after that Act took effect. Under the applicable provision of the new law, Jocson would have been required to prove lawful admission to the United States for permanent residence; no such requirement existed under the old law. There was no question that he was entitled to naturalization if the old law applied—as he contended it did pursuant to Section 405(a). The Government took the position that 405(b) and not 405(a) governed and that having failed to file a petition for naturalization prior to the effective date of the Act, the new and not the old law applied. Again, the resolution of the conflicting claims calls for a definitive construction of the meaning and applicability of Sections 405(a) and 405(b).

The fundamental questions presented in the instant case are identical to those presented in the *Menasche* and *Jocson* cases. There is no way of estimating how many other naturalization proceedings are pending in courts throughout the land in which the same questions exist, but based upon the number of naturalization proceedings instituted annually,[4] the number may well run into thousands.

2. Not only are the *Menasche* and *Jocson* cases examples of the pervasiveness of the problems posed by the instant

[3] Appeal to the Court of Appeals for the Ninth Circuit was noted by the United States on March 12, 1954.

[4] According to Table 37, **Imm. & Nat. Serv. Ann. Rep. (1952)**, for the year ending June 30, 1952, 88,655 persons were naturalized; 111,461 filed Declarations of Intention; and 94,086 filed petitions for naturalization. No figures are available for the number of Form N-400's filed during this period.

For the year ending June 30, 1951, 54,716 persons were naturalized; 91,487 filed Declarations of Intention; and 61,634 filed petitions for naturalization.

case, but the construction of the savings clauses in those cases is in conflict with the decisions of the courts below.

In each case, the courts held that a naturalization proceeding instituted prior to the effective date of the 1952 Act came within the scope of Section 405(a); that persons who had instituted valid naturalization proceedings prior to the effective date had at least a "right in process of acquisition" as that phrase is used in Section 405(a); and that Section 405(a) by its express terms prevents any changes made by the 1952 Act from "affecting" such a petitioner's right to naturalization. Implicitly, these courts also held that the comprehensive savings clause of Section 405(a) was not limited by the narrow language of Section 405(b), and that if there was any conflict between these provisions the "broad and sweeping" language of Section 405(a) must prevail.

When the decision of the district court in *Petition of Menasche* was appealed by the Government to the First Circuit, the Second Circuit's decision in this case had already been issued and was available for examination on that appeal. Apparently the construction the Court below placed upon Sections 405(a) and (b) was strongly urged on the First Circuit. But this construction was unequivocally rejected:

> "Subsection (a) of § 405, however, is broad and sweeping in its terms. Indeed it is so comprehensive that subsection (b) seems redundant. See *Shomberg v. United States*, decided by the Court of Appeals for the Second Circuit January 25, 1954. But however that may be, subsection (a) provides categorically that 'Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, . . . or to affect . . . any status, condition *right in process of acquisition* [italics ours] . . . existing, at the time this Act shall take effect; but as to all such . . . rights . . . the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect.'" *U. S. v. Menasche*, 210 F. 2d 869, 871

The First Circuit's express citation of the decision of the Court below, and its refusal to follow it, establish a conflict which should be settled by a decision of this Court.

3. The decision of the Court below, when considered in the light of the decisions of the First Circuit in the *Menasche* case and the District Court for Hawaii in the *Jocson* case, creates an anomaly in the application of the savings clauses to naturalization proceedings which is neither reasonable nor supportable in logic or in the law.

In the *Menasche* case, it was held that the filing of a declaration of intention prior to the effective date of the 1952 Act gave the applicant a right in process of acquisition which, under Section 405(a), could not be affected by any changes made by the new law, and as to which Section 405(a) continued in force the old law. In the *Jocson* case, it was held that the filing of a Form N-400, Preliminary Application to File a Petition for Naturalization, likewise gave the applicant a right in process of acquisition which merited the protection of Section 405(a). But in the instant case, where the petition for naturalization itself was filed prior to the effective date of the 1952 Act, the Petitioner has been denied the protection of Section 405(a), and placed under Section 405(b).

This strange result is all the more peculiar since the Petitioner in the instant case had, in fact, filed a Form N-400, prior to filing his petition for naturalization. He had not only done as much as the petitioners in *Menasche* and *Jocson*, but had, in fact, done more. Yet despite the fact that his application for citizenship was further advanced than the applications of either Menasche or Joeson, under the decision of the Court below he is denied the protection of Section 405(a) and is thus accorded less protection under the savings clauses.

We believe that the decision of the Court below is erroneous and the conflicting decisions in the *Menasche* and *Jocson* cases are correct.

4. The substantiality of the questions presented, and the need at this time for answers from this Court, is evidenced by the variations in views among the judges who have considered and sought to answer them. This case has been heard by four judges and there have been three different opinions, each based upon different reasoning. It is clear from the text of each of these opinions that the questions raised are vexing and hardly susceptible to a simple or quick solution. Moreover, the different opinions in the *Menasche* case, where a diametrically opposite conclusion was reached, indicate that the District and Circuit Courts there found the problem no less troublesome. It is also noteworthy that the Government has filed an appeal to the Court of Appeals for the Ninth Circuit in the *Jocson* case and presumably there will be a new opinion on these questions from that Circuit shortly. Such confusion, so readily apparent, is ample evidence of the need for a definitive construction of the savings clauses by this Court.

5. In their efforts to resolve the difficult problems of statutory construction posed by the instant case, the three judges below who have written opinions have set out differing views with regard to the philosophy and purpose of the savings clauses in the Immigration and Nationality Act of 1952. Each of the opinions contains some reference to the so-called intentions of the Congress with regard to these problems, and the range of variation has been extreme. Thus, Judge Clark resolved certain unsatisfactory aspects of his interpretation by suggesting that it had "at least the virtue of promoting consistency of treatment of aliens" (R. 30). Judge Frank resolved his doubts because he thought "the well-known dominant purpose of the chief sponsors of the Act was to ensure the deportation of persons like petitioner" (R. 32). Judge Dimock, in the District Court below, refused to accept the construction urged by Petitioner—though admitting that this construction "might have been an intelligible legislative scheme"

—for the reason that "Congress used no words to indicate that that was its intention" (R. 18).

In the opinion of the First Circuit in *United States* v. *Menasche*, *supra*, Judge Woodbury indicated in no uncertain terms that the First Circuit was not interested in a construction which had nothing more to commend itself than the "virtue of promoting consistency of treatment of aliens." Indeed, when the Government argued that the construction of the savings clauses urged by the Petitioner should be avoided "because it would leave the law as to the naturalization of aliens unsettled for many years to come", Judge Woodbury replied: "This may be so, but the argument should be addressed to Congress. The words of the statute lead clearly to the result we have reached." 210 F. 2d at 812. Chief Judge Magruder concurred separately on this specific issue. He pointed out in his separate opinion that rather than "unsettling" the law, he thought that the result of that decision would be to continue in effect the prior law as to naturalization for "a greater period than the Government would like." He went on to note that "for all we know, the Congress in so providing may have had in mind the equities of a situation * * * where, at the date the 1952 Act went into effect, the Petitioner had arrived almost at the threshold of American citizenship * * *." Judge Woodbury concluded by stating that he was

> "naturally loathe to accept the Government's contention that the Congress intended to slam the door in the face of such an applicant for citizenship and to make him start all over again". 210 F. 2d at 812.

The differing views of Congress' intention and purpose with regard to the savings clauses, as enunciated by the First and Second Circuits, can only open a Pandora's box of confusion if permitted to stand unresolved.

6. Since by their very nature, the savings clauses apply only to proceedings instituted prior to the time the Act

of 1952 became effective, it is particularly important that any doubts with regard to their meaning and applicability be resolved and determined *now*. For it is *now* that the great majority of naturalization proceedings which were initiated prior to December 24, 1952, are coming up on court calendars for final hearing. Courts in which naturalization proceedings are held and the Immigration and Naturalization Service which is charged with the administration of the naturalization laws require a definitive interpretation *at this time* if there is to be a just application and fair adjustment between the old law and the new with regard to naturalization proceedings within the scope of the savings clauses. To let years go by and to await a cluster of cases going off in different directions is to encourage rather than dispel confusion.

This is particularly the case in this day and age when an alien who has resided in this country for over 50 years can be threatened with banishment and exile for youthful deviations which have occurred more than 38 years ago and for which the penalties established by law have already once been paid—as this Petitioner now is being threatened. It would not be well to permit the priceless privilege of citizenship and the right thereto to be surrounded by obscurities and ambiguities from the opinions in such cases.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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April 24, 1954